REMARKS

The present amendment is prepared in accordance with the new revised requirements of 37 C.F.R. § 1.121. A complete listing of all the claims in the application is shown above showing the status of each claim and the amendments to the specification and Abstract are shown above in the replacement paragraphs. For current amendments, inserted material is underlined and deleted material has a line therethrough.

Applicant appreciates the thorough search conducted by the Examiner in examining the above-identified application. Applicant has endeavored to amend the application in a sincere effort to overcome the objections and rejections, and reconsideration is requested in view of the amendments above and the remarks below.

Claims 4, 6, 7, 9, 11, 13-16, 18, 19 and 21-23 have been amended

Non-elected claims 24-30 have been canceled.

Claims 31-42 have been added. Support for the new claims can be found in the specification in the paragraph beginning at page 11, line 3, in Fig. 6, and in the claims as originally filed.

No new matter has been added.

Election Restrictions

For purposes of placing the application in a condition for allowance, applicant has canceled non-elected claims 24-30. No new matter has been added.

Specification

The specification has been amended for clarification purposes only. Such amendments to the specification are fully supported in the originally filed specification, claims and drawings. With respect to the first and second attachment devices, applicant points out that such attachment devices are illustrated in the originally filed drawings as substantially circular symbols.

No new matter has been added.

Allowable Claims

The Examiner has indicated that claims 3-5, 7, 9, 10, 13-15, 21 and 22 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Accordingly, applicant has amended claim 4 into independent form to include the limitations of base claim 1. As such, it is submitted that now independent claim 4, and claims 5-7 dependent thereon, are all in a condition for allowance. Applicant has also placed claim 9 into independent form to include the limitations of base claim 1. It is submitted that now independent claim 9, and claims 10-18 dependent thereon, are also all in a condition for allowance. Claim 21 has been amended and placed into independent form to include the limitations of base claim 19. Applicant submits that now independent claim 21, and claims 22, 23 and 31-33 dependent thereon, are all in a condition for allowance. In

summary, it is submitted that claims 4-7, 9-18, 21, 22, 23 and 31-33 are in a condition for allowance.

In view of the foregoing, independent claim 1, with claims 2, 3, 8, and 34-38 dependent thereon, and independent claim 19, with claims 20 and 39-42 dependent thereon, remain pending.

No new matter has been added.

Rejections Under 35 U.S.C. § 102

The Examiner has rejected claims 19, 20 and 23 under 35 U.S.C. § 102(b) as being anticipated by Won U.S. Pat. No. 4,975,988. Applicant disagrees.

Amended independent claim 19, and claims 20 and 39-42 dependent thereon, are all directed to a foot actuated pedal apparatus that includes a base plate having at least one opening, a top plate pivotably attached to the base plate. The top plate and base plate each have a roller attached thereto. The assembly also includes a cable with a first end affixed to a position on the base plate internal to the pedal, and a second end of the cable affixed to a *flushing release mechanism* of a toilet_external to the pedal. The cable extends from the position on the base plate, over the first roller of the top plate, around the second roller of the base plate, out the opening of the base plate, and extends into and is encased by a cable housing. The cable is connected at a second end thereof to the flushing release mechanism, such that, upon applied pressure applied to the top plate, a length of

the cable is increased within the pedal and decreased by such length external to the pedal to effect flushing of the toilet.

Applicant submits that the present invention is not anticipated by the Won patent. Anticipation is but the ultimate or epitome of obviousness. To constitute anticipation, all material elements of a claim must be found in one prior art source. *In re Marshall*, 577 F.2d 301, 198 USPQ 344 (CCPA 1978).

It is submitted that Won is limited to a toilet seat lifting mechanisms 10 for lifting and lowering a toilet seat assembly, wherein the operating mechanism of the toilet seat, when operated, raises the seat and locks it in position until the operator disengages or unlocks the locking position allowing the seat to lower wherein as the seat is lowered a dampening device is provided to prevent slamming of the toilet seat. (Abstract, Col. 2, l. 16 to col. 3, l. 10.) As shown in Fig. 2, the toilet seat lifting mechanism 10 is installed on a toilet pedestal 20 that includes a typical toilet seat 60 and toilet seat cover 50. Lifting mechanism 70 comprising a hinge member 90 is installed adjacent the rear hinge of the toilet seat 60, and a cable mechanism 100 is connected at one end to the hinge 90 and at the other end to the foot actuated lever mechanism 80. (Col. 5, ll. 53-66.) The foot actuated lever mechanism 80 has a lever 84 whereby the cable 100 passes through the end of the lever adjacent fastener 84b, continues into the base 81 of the lever 84, around a pulley 100c, around another pulley 100b, and is anchored at position 84a of lever 84. (Col. 6, ll. 30-45 and Figs. 3-4.) That is, applicant submits that the Won patent

does not disclose or even suggest a foot actuated device for flushing a toilet as is currently claimed. Again, it is limited to lifting and lowering a toilet seat.

Accordingly, it is submitted that the claims of the instant invention include limitations not disclosed nor contemplated by Won such that Won does not anticipate nor render obvious the instant invention.

Rejections Under 35 U.S.C. § 103

With respect to the remaining claim rejections, the Examiner has rejected claims 1, 2 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Coret U.S. Pat. No. 1,614,346 in view of Won U.S. Pat. No. 4,975,988 and in view of Lawrence U.S. Pat. No. 5,289,593. Applicant disagrees with this rejection.

It is submitted that independent claim 1, and claims 2, 3, 8, and 34-38 dependent thereon, are all directed to a foot actuated toilet flushing apparatus that includes a pedal having a top plate pivotably attached to a base plate, with a first roller attached to the top plate and a second roller attached to the base plate. The apparatus also includes a tank claim positioned on a backside edge of a tank of a toilet and extends into an interior thereof. The toilet tank has an internal release means. A cable, having a cable housing encasing at least a portion thereof, resides in the pedal, extends out of the base plate, and into the interior of the toilet tank at the backside. The cable is held in place by the tank clamp and is connected to the internal release means within the toilet tank. Upon applying pressure to the top plate of the pedal, a length of the cable is increased within the pedal and decreased

by such length within the interior of the tank to activate the internal release means and effect flushing of the toilet.

Applicant submits that the Coret patent discloses a conventional prior art reference at which the present invention is aimed at overcoming (*See*, Specification page 2, lines 7-22) by disclosing a foot actuated device connected to the external flushing lever of a toilet. In detail, Coret discloses a tank 2 having a lever 4 pivotally mounted 5 on a support 6 (Col. 1, ll. 38-46 and Fig. 2.) The foot operated flushing device of Coret includes a chain 7 within a vertical tube 8 that is attached to the lever 4 at an outer end thereof. (Col. 1, ll. 47-53 and Fig. 2.) In operation, by pressing down on the treadle 25', the treadle lever 25 is caused to rotate in one direction and lever 24 operate in an opposite direction to pull down on chain 7 for actuating the external lever 4 to flush the toilet. (Col. 2, ll. 84-98.)

In the above office action, the Examiner recognizes that Coret fails to disclose the specific nature of the pedal and its connection to the flush valve. To overcome this deficiency, the Examiner cites Won and Lawrence. Applicant submits that neither Won nor Lawrence, alone or in combination, remedy the deficiencies of Coret.

As discussed above, Won is limited to a toilet seat lifting mechanisms 10 for lifting and lowering a toilet seat assembly. A cable mechanism 100 of the assembly is connected to at one end a hinge member 90 and the other end the foot actuated lever mechanism 80 for lifting and lowering the toilet seat. (Abstract, Col.

2, l. 16 to col. 3, l. 10, col. 5, ll. 53-66, col. 6, ll. 30-45 and Figs. 2-4.) Won does not disclose, contemplate or even suggest connecting a foot actuated device to an internal release means within a toilet tank via a cable for flushing such toilet. Won is merely cited for a foot pedal employing rollers, and a Bowden cable to lift a seat.

The Examiner has cited the Lawrence patent for the limitation of a tank clamp mechanism holding a Bowden cable. However, applicant submits that Lawrence also does not disclose, contemplate or suggest a foot actuated device connected to an internal release means within a toilet tank for flushing the toilet.

It is submitted that Lawrence is limited to disclosing an automatic self-lowering apparatus for lowering a toilet seat and/or lid. (Col. 1, ll. 5-6 and 39-43.) It teaches that a toilet lid 22 is provided with a rearward-extending lid arm 30, and/or a toilet seat 20 is provided with a rearward-extending seat arm 40, whereby these arms are respectively connected to cables 50, 50'. (Col. 3, ll. 1-40, and Figs. 1, 3 and 4.) Cables 50, 50' enter plastic sleeves 55, 55' and are secured to tank brackets 14A, 14C, respectively, and cable 50 is held in the tank by a second bracket 14B. The cables 50, 50' are secured to weights 90, 90' that moves up and down with the flushing of the toilet. (Col. 3, ll. 12-55 and Fig. 4.) Upon pressing down on a lever 18, water in tank 14 falls rapidly causing weights 90, 90' to pull cables 50, 50' downward, which in turn pulls arms 30 and/or 40 for lifting lid 22 and/or seat 20, respectively. As water slowly refills tank 14, the effective weight

of weights 90, 90' slowly decrease, thereby slowly decreasing the torque applied by arms 30, 40 for lowering the lid and/or seat. (Col. 3, l. 66 to col. 4, l. 26.)

In the above office action, the Examiner states that "it would have been obvious to employ the pedal and connections of Won and the clamp arrangement of Lawrence in lieu of the elements of Coret. Motivation is found as all are employed in foot-operated devices in a flush closet environment." Applicant disagrees and submits that the Examiner has not established a *prima facie* case of obviousness under the standards of 35 USC § 103(a).

It is well established law that citing references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious, *Ex parte Hiyamizu* (BPAI 1988) 10 USPQ 2nd 1393, absent evidence of a motivating force which would impel a person skilled in the art to do what Applicant has done. *Ex parte Levengood* (BPAI 1993) 28 USPQ 2nd 1300. To properly combine references to reach a conclusion of obviousness, there must be some teaching, suggestion or inference in either or both of the references, or knowledge generally available to one of ordinary skill in the art which would have led one to combine the relevant teachings of the references. *Ashland Oil, Inc. v. Delta Resins and Refractories, Inc. et al.* (CAFC 1985) 227 USPQ 657. Both the suggestion to make or carry out the claimed invention and the reasonable expectation of success must be founded in the prior art, not in Applicants'

disclosure. *In re Vaech* (CAFC 1991) 20 USPQ 2nd 1438. The references used by themselves, and not in retrospect, must suggest doing what Applicant has done. *In re Skoll* (CCPA 1975) 187 USPQ 481.

Further, the fact that references are in the same art is insufficient basis on which to combine the references. *In re Levitt* (CAFC 1989) 11 USPQ 2d 1315. Obviousness does not exist if the prior art neither indicates which of the disclosed limitations are critical nor gives direction as to which of many choices is likely to be successful. *Merck & Co., Inc. vs. Biocraft Labs., Inc.* (CAFC 1989) 10 USPQ 2d 1843. Where the prior art gives no indication of which limitations are critical and no direction as to which of many possible choices is likely to be successful, the fact that the claim combination falls within the broad scope of possible combinations taught therein does not render it unpatentably obvious. *In re O'Farrell* (CAFC 1988) 7 USPQ 2d 1673.

Applicant submits that the cited prior art references do not disclose, contemplate or suggest connecting a foot actuated device to an internal release means within a toilet tank for flushing the toilet. Again, Coret fails to disclose the specific nature of the pedal and its connection to a flush valve (which the Examiner has recognized), Won is limited to a toilet seat lifting mechanisms and does not disclose or suggest connecting a pedal to a toilet tank flush valve, and similarly, Lawrence is limited to a self-lowering apparatus for lowering a toilet seat and/or lid and also does not disclose or suggest connecting a pedal to a flush valve within a

toilet tank. As such, it is submitted that none of the cited references, alone or in any proper combination thereof, teach, suggest or contemplate, nor is there knowledge generally available to one of ordinary skill in the art which would have led one to combine the teachings of the references to render applicant's claimed foot actuated device connected to an internal release means within a toilet tank for flushing a toilet.

Regarding the level or ordinary skill in the pertinent art, it is further submitted that applicant's invention is unobvious and would only be found based on applicant's own disclosure, which, of course, is improper as a hindsight reconstruction of applicant's invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983) (Hindsight based on reading of the patent in issue may not be used to aid in determining obviousness). Likewise, hindsight and the level of ordinary skill in the art may not be used to supply a component missing from the prior art references. *Al-Site Corp. v. VSI International, Inc.*, 174 F.3d 1308, 1324, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999).

In view of the foregoing, it is submitted that neither Coret, Won nor Lawrence, alone or in any proper combination thereof, render obvious the present invention.

It is for these reasons that applicants submit that the application is in a condition where allowance of the case is proper. Reconsideration and issuance of

a Notice of Allowance are respectfully solicited. Should the Examiner not find the claims to be allowable, Applicants' attorney respectfully requests that the Examiner call the undersigned to clarify any issue and/or to place the case in condition for allowance.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date indicated below as first class mail in an envelope addressed to MAIL STOP AMENDMENT, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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